

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C. FAHEEM R. HARDEMAN,
Plaintiff,

vs.

No. C 04-3360 SI

AMTRAK/CALTRAIN RAILROAD,
Defendants.

COPY

DEPOSITION OF DENVER JAY PAYNE

April 17, 2006

PATRICIA CALLAHAN & ASSOCIATES, INC.
Certified Shorthand Reporters
Oakland, California 510-835-3993
San Francisco, California 415-788-3993
Castro Valley, California 510-885-2371

Facsimile 510-247-9775
WeReport@aol.com

Reported by:
LaRelle M. Fagundes
CSR No. 9762

EXHIBIT J

1 lawyers.

2 A. No. Recently, no.

3 Q. No.

4 Do you recall in or about April of 2003
5 talking to anyone about the derailment?

6 A. At the time of the derailment?

7 Q. Yes.

8 A. On the 10th?

9 Q. Yes.

10 A. Yes.

11 Q. Okay.

12 Tell me who you spoke to about it on the
13 10th.

14 A. My boss, Russ Jordan. When I heard that we
15 had a derailment there, I called. He was in the
16 back room. I spoke with him. And later I spoke
17 with Charlie Miller, who is Russ's boss.

18 Q. Anyone else?

19 A. Not that I recall.

20 Q. Is Mr. Jordan still employed with Amtrak,
21 to the best of your knowledge?

22 A. To the best of my knowledge.

23 Q. What was his position?

24 A. MCO, manager of commute operation.

25 Q. Okay.

DENVER JAY PAYNE,

Being first duly sworn, testified as follows:

EXAMINATION BY MS. PRICE

MS. PRICE: Q. Can you state
your full name for the record, please.

A. Denver Jay Payne.

Q. Okay.

And what is your current occupation?

A. Retired.

Q. Good. Congratulations.

A. Thank you.

Q. What were you doing before you retired?

A. I worked for the railroad for 42 years,
various jobs in all those 42 years.

Q. And you retired from Amtrak; is that
correct?

A. May 1st of last year.

Q. Okay.

And was Amtrak your only employer in the
railroad industry?

A. No. 30 years with Southern Pacific and 12
with Amtrak.

Q. Okay.

Have you ever had your deposition taken

1 And when you looked at the remote screen,
2 was Russ present?

3 A. Yeah, he was present.

4 Q. And could you see the train or the engine,
5 then, derailed?

6 A. I could see a red line which showed that we
7 had a derailment --

8 Q. Okay.

9 A. -- straight out to the street.

10 Q. Okay. All right.

11 And you say you had brought in another
12 train before you were aware of the derailment,
13 correct?

14 A. That is correct.

15 Q. Okay.

16 So how many -- how much time elapsed
17 between the derailment and you bringing in the
18 train, if you know?

19 A. Oh, less than five minutes.

20 Q. Okay.

21 A. There was a bit of confusion up there.

22 Q. Okay.

23 So did anyone from the scene of the
24 derailment contact you?

25 A. My signal maintainer was there.

1 Q. Who was that?

2 A. His last name is Murphy. We just called
3 him Murph. And he told me that they were off the
4 edge of -- off the track. We call it the bluxom
5 lead, b-l-u-x-o-m. That's an old railroad term.
6 And that's lined for the street. And that was my
7 first inkling that we had something bad wrong.

8 Q. You don't know Murph's full name?

9 A. I can't remember his first name. Everybody
10 called him Murph.

11 Q. All right.

12 To the best of your knowledge, is Murph
13 still employed with Amtrak?

14 A. Yes. Oh, yes.

15 Q. Okay.

16 Did you speak to someone named Billy Rogers
17 immediately after the -- I apologize.

18 Immediately after the derailment occurred,
19 in this very brief period afterwards, did you speak
20 to Billy Rogers?

21 A. I don't recall because I spoke to so many
22 people, and Billy may have been in the loop, but I
23 can't recall specifically.

24 Q. Okay.

25 You know who Billy Rogers is?

1 Q. Okay.

2 Did any one of the crew members talk
3 directly to you?

4 A. Eventually.

5 Q. Okay.

6 Tell me what you recall in terms of the
7 sequence of events.

8 MR. ERLEWINE: Objection. Vague and
9 ambiguous.

10 Go ahead. You can answer.

11 THE WITNESS: That morning I had
12 lined the crew from the depot to take a train set
13 to the coach yard. There they were going to drop
14 off the cars and bring the engine light back to the
15 engine spur, or we sometimes call it the pocket.
16 And I lined the crew from the coach back to the
17 pocket and got all of the switches, but I couldn't
18 bring in a signal. It would not come in. And the
19 rules are you resend it. And it still didn't come
20 in, the signal, and so I had to block up all of the
21 switches on the route back to the pocket. Then I
22 gave permission to the train crew, which was
23 Hardeman, Soule, and Bruce Shelton was on the
24 engine. But I gave the information to -- or
25 permission to pass that red signal to the helper.

1 Paul Soule, S-o-u-l-e. He repeated it back to me.
2 And I said that is correct. And he takes off. And
3 they go through the -- the switch on my screen was
4 lined toward the engine spur or the pocket. But in
5 the field, it was reversed. It was lined toward
6 the street. They came around and went right off
7 the end of the track and derailed.

8 MS. PRICE: Okay.

9 Q. And then what happened?

10 MR. ERLEWINE: Objection. Vague and
11 ambiguous and calls for a narrative.

12 Go ahead.

13 THE WITNESS: I did not know that
14 they were off the end of the track. I thought they
15 had derailed inside of the engine spur, and --
16 because my board was clear. In fact, I brought in
17 a train right into a track right next to them
18 because I could get the switches. I could get the
19 signals that way.

20 And I didn't know at the time that they
21 had -- they were still -- they had gone off of the
22 end of the track toward the street completely
23 opposite of how I'd lined them. And I got ahold of
24 Russ, and I said -- told Russ we had a derailment.
25 And I wasn't quite sure where it was. Because when

1 I walked back to get him, we have what we call a
2 remote unit that reflects what we have on our
3 screens, we have four computers, and it's opposite
4 of mine and different, and it should be the same.
5 And I questioned Russ about this. And he mentioned
6 something to me about that the day before -- I
7 wasn't there the day before, I was off -- that they
8 had changed the polarity, which I have no idea what
9 change in polarity is, but it showed the switch
10 opposite of what it should have been.

11 MS. PRICE: Q. So you mentioned
12 the remote screen. Was that in Russ's office?

13 A. Near it. It's in our office, but around
14 the corner from where I worked.

15 Q. Okay.

16 And the remote screen was different from
17 the screen in your office?

18 A. That is correct.

19 Q. In what way?

20 A. My screen showed that the switch was lined
21 for the pocket. The remote screen showed it lined
22 toward the street.

23 Q. Okay.

24 A. Just reversed.

25 Q. Okay.

incorrect.")

MS. PRICE:

Q. Are you

comfortable with that answer?

A. No.

Q. Okay.

A. I could not give a proceed signal with the route that I had established to the pocket because my switches were correct, the signal would not come in. I did not know at the time that the switch in the field was reversed. That's the reason that signal would not come in. That I found out later.

Q. Okay.

A. But --

Q. All right.

Now, you testified also that you made an effort to block up the switches.

Can you tell me what you mean by that?

A. Before you can authorize a train or an engine past a stop signal, a red signal, by the rules, you have to block up all of the switches and the signals that pertain to that portion of the track that you're going to what we call a flag, to flag that train or engine over.

Q. Okay.

So what does it mean to block them up?

1 first part of his answer.

2 (Record read by the reporter as follows:

3 "A. When I reversed the switch on my
4 screen and gave a signal, it should
5 have been a green from the coach
6 yard.")

7 MS. PRICE:

Q. When you say

8 "when I reversed the switch," I believe, what do
9 you mean by that?

10 A. To line a -- to make a movement from the
11 lead into the pocket.

12 Q. Okay.

13 Is the switch normally set to direct the
14 train into the lead?

15 A. From which direction?

16 Q. I have no idea.

17 Is it normal -- let me rephrase, then.

18 Was it necessary for you to reverse the
19 switch for the engine to go into the pocket?

20 A. No.

21 Q. Okay.

22 Why did you have to reverse the switch?

23 A. It had been reversed for ten years. We
24 seldom ever normal the switch to go out into the
25 street.

1 Q. Okay.

2 A. It stayed always for the pocket.

3 Q. Okay.

4 And how do you know that?

5 A. Because we never lined it anything onto the
6 street, because it doesn't go anywhere.

7 Q. Okay. All right.

8 A. It goes out so many feet, and then drops
9 off to nothing, into the dirt.

10 Q. Okay.

11 And so were other employees who worked in
12 that yard familiar with that, to the best of your
13 knowledge?

14 A. To the best of my knowledge, yes.

15 Q. Was it common knowledge that the switch
16 goes into the pocket?

17 A. Yes, the last switch always going into the
18 pocket.

19 Q. Okay.

20 And so when you say you had to reverse the
21 switch, why did you have to reverse the switch?

22 A. Well, that's railroad terminology, is that
23 the switch is reversed to go into the pocket. You
24 commonly say to leave a lead to go into the track,
25 the switch is reversed.

1 Q. Okay.

2 If the switch is always set to go into the
3 pocket, why would you reverse it?

4 A. It was reversed.

5 Q. So you're saying you didn't reverse the
6 switch?

7 A. All I did was give a quick route from the
8 coach to the pocket, and the machine lines
9 everything for you.

10 Q. Okay. All right.

11 And as long as you've been doing it, for
12 that ten years, the machine lined that switch to go
13 into the pocket; is that correct?

14 A. Because that switch is always lined into
15 the pocket, and they call it reversed.

16 Q. Okay. All right, then.

17 Do you know why the switch didn't go into
18 the pocket that morning?

19 A. Not at that time I didn't.

20 Q. Do you know why now?

21 A. Afterwards it was because of changing the
22 polarity on that switch, that it was opposite of
23 what it should have been.

24 Q. Okay.

25 And do you know who changed it?

1 A. I was told that it was Mike Carrasco at the
2 request of Russ Jordan to change the switch to look
3 like the symbol of a derail. And that was what I
4 was told.

5 Q. Who told you that?

6 A. Russ.

7 Q. And did he say why he did that?

8 A. He said he wanted to make it look like a
9 derail instead of a switch.

10 Q. Did he say why he wanted to do that?

11 A. No, he didn't.

12 Q. Did he indicate if he knew whether or not
13 by doing that that that would cause the switch not
14 to lead the engine into the pocket?

15 A. No, he did not.

16 Q. He didn't know that?

17 A. He didn't know it.

18 Q. Okay.

19 What is a derail?

20 A. A derail is a switch in one of the rails or
21 both of the rails, that when it's opened, a train
22 or engine coming up will go out and derail, go
23 right off the track.

24 Q. Did he say when he made this change?

25 A. The day before, the 9th.

1 incident of April 10th, did you have any direct
2 contact with Mr. Hardeman?

3 A. No, I don't recall.

4 Q. Okay.

5 Do you recall if Mr. Soule was the only
6 person on the train that you spoke to?

7 A. He was the only one I spoke to to give
8 permission to pass that signal.

9 Q. Okay.

10 A. That's correct.

11 Q. All right, sir.

12 Did you have any communication with
13 Bruce Shelton?

14 A. No.

15 Q. When you returned to work -- you did not
16 return to work until June, sometime in June,
17 correct?

18 A. Six weeks, yes.

19 Q. When you returned to work, was that -- the
20 switch that had caused the problem on your last day
21 of work, was it switched back the way it had always
22 been prior to that?

23 A. Yes, ma'am.

24 Q. Okay.

25 And then after -- from that time in June of

1 '03 until you retired, was that switch ever set
2 back the way it was the day that it caused the
3 derailment?

4 A. No, ma'am.

5 Q. Okay.

6 On your screen or -- is there anything on
7 your screen that would tell you the speed of the
8 train?

9 A. No, ma'am.

10 Q. Okay.

11 Was there any way for you to monitor the
12 speed of the train where you were situated?

13 A. No, ma'am.

14 Q. Okay.

15 Do you know what investigation, if any, was
16 undertaken by the company to determine what the
17 problem was between your screen and the remote
18 screen?

19 A. No, ma'am, I do not.

20 Q. Okay. All right.

21 Have you -- do you have any knowledge of
22 anyone other than Mr. Hardeman, engineer Hardeman,
23 splitting a switch?

24 A. Not personally.

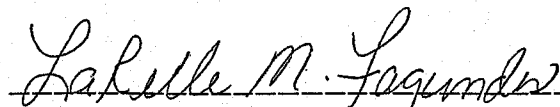
25 Q. Has anyone told you about any other

CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter, State of California, hereby certify that the witness in the foregoing deposition was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed this 26th day of April, 2006.



LARELLE M. FAGUNDES, CSR 9762